

HOUSE BILL 1032

D3

2lr0328

By: **Delegate McDermott**

Introduced and read first time: February 10, 2012

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Agritourism Activity – Civil Liability – Defense of Assumption of Inherent**
3 **Risks**

4 FOR the purpose of providing that an agritourism professional who provides certain
5 notice concerning inherent risks of agritourism activity to a participant in the
6 activity is not subject to civil liability under certain circumstances; defining
7 certain terms; providing for the application and construction of this Act; and
8 generally relating to establishing a certain defense to civil liability based on a
9 participant's assumption of inherent risks of agritourism activity.

10 BY adding to

11 Article – Courts and Judicial Proceedings

12 Section 5–427

13 Annotated Code of Maryland

14 (2006 Replacement Volume and 2011 Supplement)

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
16 MARYLAND, That the Laws of Maryland read as follows:

17 **Article – Courts and Judicial Proceedings**

18 **5–427.**

19 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE**
20 **MEANINGS INDICATED.**

21 **(2) “AGRITOURISM ACTIVITY” MEANS AN ACTIVITY CONDUCTED**
22 **ON A FARM OR RANCH THAT ALLOWS A MEMBER OF THE GENERAL PUBLIC, FOR**
23 **RECREATIONAL, ENTERTAINMENT, OR EDUCATIONAL PURPOSES, TO VIEW OR**
24 **ENJOY A RURAL ACTIVITY, INCLUDING FARMING, RANCHING, OR HISTORICAL,**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 CULTURAL, AGRICULTURAL, HORTICULTURAL, SILVICULTURAL,
2 AQUACULTURAL, APICULTURAL, HARVESTING, OR NATURAL ACTIVITIES OR
3 ATTRACTIONS.

4 (3) "AGRITOURISM PROFESSIONAL" MEANS A PERSON WHO IS
5 PROVIDING AN AGRITOURISM ACTIVITY, REGARDLESS OF WHETHER THE
6 PERSON IS COMPENSATED.

7 (4) (I) "INHERENT RISK OF AGRITOURISM ACTIVITY" MEANS A
8 DANGER OR CONDITION THAT IS AN INTEGRAL AND ORDINARY PART OF AN
9 AGRITOURISM ACTIVITY, INCLUDING A NATURAL SURFACE OR SUBSURFACE
10 CONDITION OF LAND, VEGETATION, WATERS, A STRUCTURE, EQUIPMENT, OR
11 BEHAVIOR OF A WILD OR DOMESTIC ANIMAL.

12 (II) "INHERENT RISK OF AGRITOURISM ACTIVITY"
13 INCLUDES THE POTENTIAL FOR A PARTICIPANT TO ACT IN A NEGLIGENT
14 MANNER THAT MAY CONTRIBUTE TO CAUSING DAMAGE TO THE PROPERTY OF
15 THE PARTICIPANT OR PERSONAL INJURY OR DEATH TO THE PARTICIPANT,
16 INCLUDING FAILING TO FOLLOW INSTRUCTIONS GIVEN BY AN AGRITOURISM
17 PROFESSIONAL OR FAILING TO EXERCISE REASONABLE CAUTION WHILE
18 PARTICIPATING IN AGRITOURISM ACTIVITY.

19 (5) "PARTICIPANT" MEANS A PERSON, OTHER THAN AN
20 AGRITOURISM PROFESSIONAL, WHO ENGAGES IN AGRITOURISM ACTIVITY
21 REGARDLESS OF WHETHER THE PERSON PAID TO ENGAGE IN AGRITOURISM
22 ACTIVITY.

23 (B) THIS SECTION DOES NOT APPLY TO AN ACTION FOR PRODUCT
24 LIABILITY.

25 (C) (1) IF AN AGRITOURISM PROFESSIONAL PROVIDES NOTICE OF
26 THE WARNING SET FORTH IN SUBSECTION (F) OF THIS SECTION TO A
27 PARTICIPANT, THE AGRITOURISM PROFESSIONAL IS NOT LIABLE FOR DAMAGE
28 TO THE PROPERTY OF THE PARTICIPANT OR PERSONAL INJURY OR DEATH TO
29 THE PARTICIPANT THAT RESULTS FROM AN INHERENT RISK OF AGRITOURISM
30 ACTIVITY.

31 (2) A PARTICIPANT OR A BENEFICIARY OF A PARTICIPANT MAY
32 NOT MAINTAIN AN ACTION AGAINST OR RECOVER FROM AN AGRITOURISM
33 PROFESSIONAL FOR PROPERTY DAMAGE, PERSONAL INJURY, OR DEATH THAT
34 RESULTS EXCLUSIVELY FROM AN INHERENT RISK OF AGRITOURISM ACTIVITY.

35 (D) SUBSECTION (C) OF THIS SECTION DOES NOT APPLY TO:

1 (1) AN ACT, ERROR, OR OMISSION OF AN AGRITOURISM
2 PROFESSIONAL THAT IS WANTON, WILLFUL, INTENTIONALLY TORTIOUS, OR
3 GROSSLY NEGLIGENT AND IS THE PROXIMATE CAUSE OF PROPERTY DAMAGE,
4 PERSONAL INJURY, OR DEATH; OR

5 (2) AN AGRITOURISM PROFESSIONAL WHO HAS ACTUAL
6 KNOWLEDGE OR REASONABLY SHOULD HAVE KNOWN OF A DANGEROUS
7 CONDITION OF LAND, VEGETATION, STRUCTURES, OR EQUIPMENT USED IN THE
8 AGRITOURISM ACTIVITY OR A DANGEROUS PROPENSITY OF A PARTICULAR
9 ANIMAL USED IN THE AGRITOURISM ACTIVITY AND DOES NOT NOTIFY A
10 PARTICIPANT OF THE DANGEROUS CONDITION OR PROPENSITY THAT IS THE
11 PROXIMATE CAUSE OF PROPERTY DAMAGE, PERSONAL INJURY, OR DEATH.

12 (E) AN AGRITOURISM PROFESSIONAL SHALL PLEAD A DEFENSE UNDER
13 THIS SECTION AS AN AFFIRMATIVE DEFENSE IN ACCORDANCE WITH THE
14 MARYLAND RULES.

15 (F) (1) AN AGRITOURISM PROFESSIONAL SHALL POST AND MAINTAIN
16 A SIGN THAT:

17 (I) CONTAINS IN CONSPICUOUS TYPE THE WARNING
18 NOTICE SPECIFIED IN PARAGRAPH (3) OF THIS SUBSECTION; AND

19 (II) IS CLEARLY VISIBLE AT EACH ENTRANCE TO THE
20 LOCATION OF THE AGRITOURISM ACTIVITY.

21 (2) AN AGRITOURISM PROFESSIONAL SHALL ENTER INTO A
22 CONTRACT IN WRITING WITH EACH PARTICIPANT THAT CONTAINS IN
23 CONSPICUOUS TYPE THE WARNING NOTICE SPECIFIED IN PARAGRAPH (3) OF
24 THIS SUBSECTION.

25 (3) EACH SIGN AND CONTRACT DESCRIBED IN THIS SUBSECTION
26 SHALL CONTAIN THE FOLLOWING NOTICE:

27 “WARNING

28 UNDER MARYLAND LAW, THERE IS NO LIABILITY FOR DAMAGE TO THE
29 PROPERTY OF A PARTICIPANT OR PERSONAL INJURY OR DEATH TO A
30 PARTICIPANT IN AGRITOURISM ACTIVITY CONDUCTED AT THIS LOCATION IF
31 THE PROPERTY DAMAGE, PERSONAL INJURY, OR DEATH RESULTS FROM AN
32 INHERENT RISK OF AGRITOURISM ACTIVITY. AN INHERENT RISK OF
33 AGRITOURISM ACTIVITY IS A DANGER OR CONDITION THAT IS AN INTEGRAL AND

1 ORDINARY PART OF AGRITOURISM ACTIVITY, INCLUDING A CONDITION OF THE
2 SURFACE OR SUBSURFACE OF LAND, VEGETATION, WATERS, A STRUCTURE, OR
3 EQUIPMENT AND A PROPENSITY OF AN ANIMAL, AS WELL AS THE POTENTIAL
4 FOR YOU TO ACT IN A NEGLIGENT MANNER THAT MAY CONTRIBUTE TO CAUSING
5 DAMAGE TO YOUR PROPERTY OR YOUR PERSONAL INJURY OR DEATH. YOU ARE
6 ASSUMING THE INHERENT RISK OF AGRITOURISM ACTIVITY BY PARTICIPATING
7 IN THE ACTIVITY.”.

8 (G) (1) THIS SECTION DOES NOT CREATE, AND MAY NOT BE
9 CONSTRUED AS CREATING, A NEW CAUSE OF ACTION OR SUBSTANTIVE LEGAL
10 RIGHT AGAINST AN AGRITOURISM PROFESSIONAL.

11 (2) THIS SECTION DOES NOT LIMIT, AND MAY NOT BE CONSTRUED
12 AS LIMITING, AN IMMUNITY OR DEFENSE ESTABLISHED BY ANOTHER PROVISION
13 OF THE CODE OR AVAILABLE AT COMMON LAW TO WHICH AN AGRITOURISM
14 PROFESSIONAL MAY BE ENTITLED.

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
16 construed to apply only prospectively and may not be applied or interpreted to have
17 any effect on or application to any cause of action arising before the effective date of
18 this Act.

19 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 October 1, 2012.